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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE CIVIL JURISDICTION

WRIT PETITION NO. 1123 OF 1980

1. Gangadhar Moorijmal Tolani
2. Suresh Gangadhar Tolani
3. Kumar Gangadhar Tolani
4. Haresh Gangadhar Tolani
All Indian inhabitants of Bombay,
carrying on business in partnership
in the firm name and style of
M/s. Grand Bazar at Ground floor,
Nawaz Mansion, 25, Colaba Causeway,
Mumbai - 400 039. ... Petitioners

V/s

1. The Municipal Corporation of
Greater Mumbai having its
office at Mahapalika Marg, Bombay-1. ... Respondent

Mr. Berjis Coolabawala i/by M/s. Madekar Rege & Co. for the petitioners.

Mrs. P.A. Purandare for the respondent.

CORAM: R.M. LODHA &
SMT. NISHITA MHATRE, JJ.

DATED: 9TH JANUARY, 2007.

ORAL JUDGMENT (PER R.M. LODHA, J.):

The petitioners carry on the business in the name and style of M/s. Grand Bazar on the ground floor of the building known as Nawaz Mansion, situate at 25, Colaba Causeway, Mumbai - 39, as a shop. The petitioners deal with various consumer goods and in order to display the

goods they converted the two side windows of their shop premises into show cases. The size of the said two side windows is said to be 2.22 metres x 2 metres and 2.22 metres x 1.96 metres. The show windows are lightened with two tube-lights and are said to be fully covered by ground glass in order to make the articles and the labels thereon visible at night. The petitioners' initial grievance is with regard to letter dated 19.2.1979 which they received from the Ward Officer of the "A" Ward stating therein that the illuminated show cases were licenseable as advertisement under Section 328-A of the Mumbai Municipal Corporation Act. The petitioners challenged the said letter by filing writ petition being Misc. Writ Petition No. 1917 of 1979. In the said petition, the Corporation appeared and submitted that no action would be taken pursuant to the said letter and that, in future, if they intend to proceed against the petitioners, they would give fresh notice to them and after granting the opportunity of hearing, appropriate order shall be passed. The said petition was disposed of accordingly.

2. Thereafter, the petitioners received letter dated 30.10.1979 calling upon the petitioners to apply for permit in the prescribed form and make payment of fee as the two show cases were charged as illuminated

advertisements under Section 328-A. The petitioners responded to the said letter on 12.11.1979 and contended that the two show cases were for displaying various consumer goods sold by them in order to enable the members of public to read the labels and manufacturers and that of price of the goods. The petitioners also contended that the standard of intensity of light prescribed by the order dated 28.4.1949 for all kinds of show cases was arbitrary and not binding upon the petitioners. The petitioners were then called for discussion and hearing by the Superintendent of Licences. Then they received the letter dated 7.4.1980 from the Superintendent of Licences recording therein that the explanation furnished by the petitioners was not satisfactory and that they have to apply for licence within 7 days, failing which they were intimated that action would be taken against them.

3. The petitioners again vide their letter dated 15.4.1980 informed the Superintendent of Licences that the intensity of light in the two show cases was much less than what was prescribed in the circular of 28.4.1949. The concerned officer of the Corporation visited the site on 1.7.1980 and again by letter dated 5.8.1980 asked the petitioners to apply for licence and failing which, intimated that the action would be taken

against the petitioners.

4. The present petition has been filed by the petitioners for challenging the letters dated 7.4.1980 and 5.8.1980.

5. Though reply affidavit on behalf of the respondents is not on record, however, the counsel for the respondents submitted that affidavit of Hiralal Kaluram Jaykar in opposition to the writ petition was filed in the year 1981, copy thereof has been placed on record by the advocate for the petitioner in second set. We accordingly take into consideration the affidavit of Hiralal Kaluram Jaykar filed on behalf of the respondent Corporation. From the said affidavit, it transpires that the two side windows are the part and parcel of the shop premises and the tube-lights in the said windows are covered with ground glasses and not visible. However, it is stated in the reply affidavit that the goods were displayed in the show cases with the light of intensity of more than 25 candle power with labels of prices and names of articles and manufacturers to attract the customers and, therefore, the said show-cases are "advertisement" within the meaning of Sec.323-A of the Act.

6. Section 328-A of the Bombay Municipal Corporation Act, 1888 deals with regulations and control of advertisements.

7. We are concerned in this case with the provision contained in Clause (b) of sub-section (4) of Section 328-A, which provides that the expression "illuminated advertisement" does not include an illuminated display of goods, if such display: (i) is of goods merely bearing labels showing the name of the article or of its manufacturer or of both, and (ii) is made by lighting which is not, in the opinion of the Commissioner, more than is necessary to make the goods and labels visible at night.

8. There seems to be no dispute that the goods displayed in the two side show cases by the petitioners are the goods merely bear labels showing the name of the article or of its manufacturer or of both. The dispute is about the lighting in the side show windows. That the side show windows have tube-lights covered by ground glasses is not at all in dispute. By the circular issued in the year 1949, the concerned authority permitted illuminated show cases if the light did not exceed 10 feet candle power.

9. That there has been change in the measure of illumination and the illumination measured by candle power has become outdated, is admitted by the counsel for the Corporation. She submitted that vide circular SL-56 of 1982-83, dated 28.11.1982, the Municipal Corporation has passed the order to charge show cases which have intensity of illumination of more than 25 watts. However, the counsel for the Corporation is unable to inform us that the intensity of illumination fixed at 25 watts is with reference to what size of the show case. In our considered view, the petitioners' grievance deserves a re-look by the Corporation in the light of the circular dated 28.11.1982 and/or any other circular issued subsequently and in the light of the provision contained in Clause (b) of sub-section (4) of Section 328-A of the Municipal Corporation Act.

10. We, accordingly, dispose of the writ petition by the following order :

(i) The respondents shall have the subject show cases re-inspected and if lighting therein is found to have intensity of more than 25 watts, or any other wattage prescribed by the Corporation regarding intensity of illumination in any other subsequent circular, issue fresh

notice to the petitioners indicating the factual aspect about the intensity of the illumination in the subject two show cases alongwith the inspection report and give an opportunity to the petitioners to respond to such notice and explain that the illuminated display of goods in the show cases is not more than what is necessary to make the goods and labels on the articles visible at night.

(ii) The concerned authority shall pass an appropriate order after hearing the petitioners and take into consideration their response to the show cause notices.

(iii) All the contentions of the petitioners are kept open to be agitated in the subsequent proceedings. If they are aggrieved by the order that may be passed by the respondent under Section 328-A of the Municipal Corporation Act, the same shall be open to challenge in accordance with law.

(iv) In what we have stated above, the impugned letters dated 7.4.1980 and 5.8.1980 are rendered ineffective.

No costs.

(R.M. LODHA, J.)

(SMT. NISHITA MHATRE, J.)